

ATTACHMENT D

Copy of the September 29, 1998, Extension Request Letter

29 SEP 1998

The Honorable Strom Thurmond
Chairman
Senate Armed Services Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During its markup of S.8, *Superfund Cleanup Acceleration Act*, which would amend the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Senate Committee on Environment and Public Works approved an amendment to CERCLA section 120 that would amend that section's current waiver of sovereign immunity. Briefly, the waiver in section 120 would be made similar to the waivers in other environmental statutes, such as the Clean Air Act, the Clean Water Act and the Solid Waste Disposal Act. The amendment would also clarify existing law, which allows citizens, including states, to enforce applicable or relevant and appropriate requirements (ARARs) governing Federal facility cleanups.

Subsequently, the Senate Committee on Armed Services, in its report accompanying S.2060, the National Defense Authorization Act for Fiscal Year 1999, requested the Department of Defense (DoD) and the Department of Energy (DOE), in consultation with the U.S. Environmental Protection Agency (EPA), to submit to the congressional defense committees a report on the potential impact of the proposed amendment by September 30, 1998.

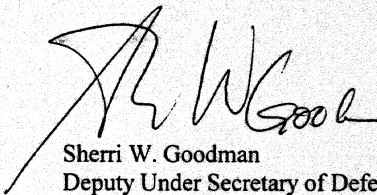
DoD and DOE are actively preparing a report, in consultation with EPA, that addresses the potential impacts of the proposed amendment on our respective cleanup programs. However, we will need some additional time to complete the report and provide for appropriate coordination within the Administration. It is our understanding, based on conversations with Committee staff, that a later submission will not disrupt your schedule for review of this issue. Accordingly, we are planning to submit the report by the end of the year. We would, however, be happy to meet with your staff to discuss our preliminary conclusions in advance of the report at their earliest convenience.

In the interim, we would like to highlight some of our concerns. As an initial note, we support the underlying goals of ensuring that DoD and DOE remain fully committed to cleaning up contaminated Federal facilities to protect public health and the environment to the same extent as non-federal entities. However, we are concerned that the amendment to the waiver of sovereign immunity could be

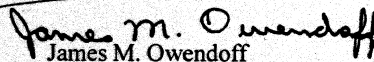
counterproductive and therefore cannot support the amendment. As you know, some Federal cleanups have been challenged by dissatisfied parties. The Departments are concerned that such parties could use the amendment to try to subject the cleanups to additional requirements, potentially resulting in controversy, litigation and delay. DoD and EPA also expressed concerns in a May 5, 1998, letter to Senator Chaffee that the amendment could undermine cleanup progress.

We believe the current waiver of sovereign immunity under CERCLA is working well, ensuring that Federal agencies follow the same process and meet the same cleanup standards as private parties. Like private parties, DoD and DOE comply with the substantive requirements of state and Federal laws and regulations. Currently, EPA and the state can already enforce against a Federal facility for failing to comply with the provisions of existing interagency agreements. Moreover, states' involvement, as already explicitly provided for and required by CERCLA, is already substantial in every ongoing and planned DoD and DOE cleanup project.

If you have any further questions, contact us or have a member of your staff contact Col. Gil Fegley, Director of Senate Legislative Liaison, DoD at (703) 695-4131, or Mr. Mathew Greenwald, Deputy Assistant Secretary for Senate Liaison, DOE at (202) 586-5468.


Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

Sincerely,


James M. Owendoff
Acting Assistant Secretary for
Environmental Management
U.S. Department of Energy

cc:

The Honorable Carl Levin
Ranking Minority Member